IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVN. APPLICATION NO. 477 OF 2006

Gajanan Kamlya Rohekar. ... Applicant.

V/s.

The State of Maharashtra & Anr. ... Respondents.

Mr. K.S. Patil for the Applicant.

Mr. Y.M. Nakhawa, APP for the State.

.....

CORAM : S.C. DHARMADHIKARI,J.

14TH DECEMBER 2006.

P.C. :

1. Heard Mr. K.S. Patil appearing for the Petitioner (original accused) and Learned APP for the State.

2. The Petitioner stood trial for offence punishable under Section 451 and 354 of Indian Penal Code. The prosecution case is that on 20th August 2004 at about 5.30 p.m. at village Mandala, the Petitioner accused committed house trespass by entering into house no.367 with intention to outrage the modesty of the prosecutrix. The Court below upon all materials produced convicted the Petitioner accused for the aforesaid offences and sentenced him to undergo rigorous imprisonment for one year and six months and fine of Rs.5000/-.

3. This sentence was awarded for both offences and was

directed to run concurrently. Criminal Appeal No.5 of 2005 was preferred against the conviction and sentence by the J.M.F.C. and on 29th November 2006, Appeal has been dismissed.

4. The Revisional jurisdiction is invoked to challenge the concurrent findings of the Courts below.

5. The Courts below were of the view that by examining P.W.1 so also the other witnesses the prosecution has proved the charge. Their testimony is reliable and trustworthy. The same has not been shattered during the course of their cross-examination. From the evidence, it is established that the Petitioner accused entered the house of the prosecutrix and went inside the bathroom. He caught hold right arm of the prosecutrix. However, thereafter, the prosecutrix freed herself and threw the broom which she was holding in the direction of the Accused, who thereafter ran away from the house of the prosecutrix. This incident was noticed by the others.

6. In these circumstances, I am of the view that no case is made out for interfering with the conviction of the Petitioner for the aforesaid offences based as it is on appreciation of the materials produced by the prosecution during the course of a trial so also after giving a fair opportunity to the Petitioner to defend himself.

7. Mr. Patil emphasised the fact that the sentence of one year and six months imposed for the offence is too harsh and dis-proportionate for an offence of aforesaid nature and that to committed by the Petitioner who was aged 52 years at the relevant time. This punishment was wholly unwarranted. He submits that the principle of proportionality plays as important role in awarding sentence. Such sentence as would not only achieve the purpose of the crime being curbed in future but which gives an opportunity to the accused to re-think and repent for the act of above nature should be imposed. Reliance is placed upon decisions of the Supreme Court where these principles have been discussed in detail.

8. Mr. Patil states that the accused is now aged 55 years. He has been taken in custody and has suffered imprisonment of 15 days already. The fine of Rs.10,000/- has already been paid.

9. In such circumstances, the sentence should be reduced to the period which is already undergone. Shri Nakhwa, learned A.P.P. states that Court below had considered this aspect as well. It has considered the nature of offence and the facts and circumstances of the case. The Petitioner accused had gone as far as invoking the provision of Probation of Offender Act before the J.M.F.C. and that is how it was held that he did not

deserve any sympathy. The prosecutrix is a married lady and the charge is of trespassing in her house and outraging her modesty.

10. In my view, there is no question of extending the benefit of Probation of Offender Act to the Petitioner accused. Right to privacy is held to be part and parcel of right to life guaranteed by Article 21 of the Constitution of India. It is also held by the Hon'ble Supreme Court that even a woman of easy virtue is entitled to safeguard and protect her modesty and privacy. Nobody has a right to enter her house against her wishes, without her consent and do any act which would be immoral. However, considering the age of the present Petitioner and that incident having taken place in 2004, interest of justice would be served if the sentence awarded is reduced to a period of one month. The fine deposited by the Petitioner to be paid over to the prosecutrix. In other words, the entire amount of Rs.10,000/- be paid over to the prosecutrix.

11. Save and accept this modification to the sentence, the Revision Application is dismissed. The conviction under both offences is upheld. Needless to state that sentence shall run concurrently for both offences.

(S.C.Dharmadhikari,J.)